IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

MFA.No. 1378 of 1999()

(AGAINST ORDER IN I.A.NOS.109,110 OF 1999 IN OPMV.402/1989 DATED 28/7/99 ON THE FILE of MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI)
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APPELLANT: 1ST RESPONDENT:

MANDAYAPURATH ABDURAHIMAN,
S/O.POKKU, ULLANAM P.O.,
PANTHARANGADI, TIRURANGADI.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:RESPONDENTS 2 TO 6:

1. **UNITED INDIA INSURANCE CO.LTD.,**
   DIVSIONAL OFFICE, MANJERI.

2. **P.K.KURIYACKO, S/O.KORUTHU,**
   PALATHINGAL P.O., PARAPPANANGADI.

3. **K.V.USMAN, S/O.MAKKARUKKUTTY,**
   KIZHAKKE VALAPPIL HOUSE, FEROKE,
   KOZHIKODE.

4. **ORIENTAL INSURANCE CO.LTD.,**
   DIVISIONAL OFFICE, CALICUT.

5. **C.NAGAN, S/O. NEELAKANDAN,**
   PARIYAPARAMBIL, THURAKKAL, KONDOTTY.

6. **V.ABDULLA, S/O.MOHAMMED KOYA,**
   MANAGING PARTNER, P.V.TRANSPORT, CHELAMBRA.

BY ADV. SRI.BABU S.NAIR for R5
SRI.GEORGE CHERIAN (THIRUVALLA) for R4

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A.NO.1378/1999

ORDER ON C.M.P.NO.6905/1999 IN M.F.A.NO.1378/1999

DISMISSED

24/05/2007 **SD/- J.B.KOSHY, JUDGE**

SD/-K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

KSS

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A.No. 1378 of 1999

Dated this the 24th day of May, 2007

Judgment

Koshy, J.

Appellant is the petitioner in O.P. (MV) No.402 of 1989 on the file of the Motor Accidents Claims Tribunal, Manjeri. While the appellant was travelling in a trekker on 23.10.1988 a bus bearing registration No.KLM 8530 came from the opposite direction and hit the trucker. Appellant sustained serious injuries and claimed Rs.2,00,000/- as compensation. The tribunal found both the drivers of the vehicle are equally negligent. It was further found that appellant was also negligent by 25%. Even though liability was fixed equally on the insurance companies, that is, United India Insurance Company Limited and Oriental Insurance Company Limited which insured the trekker and bus respectively, on a review petition filed by the United India Insurance Company Limited, the tribunal found that the liability of the Oriental Insurance Company Limited which insured the trekker was only Rs.15,000/- and United India Insurance Company is to pay 50% of the total compensation and

balance is to be paid by driver and owner of the trekker. The Tribunal found that there is 25% contributory negligence as appellant was travelling in the trekker by putting his leg outside the trekker. No appeal was filed by the sixth respondent United Insurance Company Limited.

2. With regard to quantum of compensation, it is contended that Rs.800/- taken as the monthly income is very low. Calculation of the tribunal was that he was getting Rs.800/- per month and, therefore, Rs.9,600/- per year. For 35% disability, monetary loss for an year will thus be Rs.3,360/- and for a period of 30 years, the compensation payable will be Rs.1,00,800/-. The tribunal then deducted one-third for vagaries of life and fixed Rs.67,200/- as the compensation. Fixation of multiplier at 30, fixation of monthly wages at Rs.800/- and deduction of one-third after finding of the compensation payable for 35% disability etc. are uncalled for. In the case of death, one-third amount is deducted as no personal expenses for the deceased is to be incurred after his death. The injured in this case has to continue the disability throughout his life. His left leg from knee was amputated and he is still living.

3. The appellant has suffered permanent disability of 35% as certified by the doctor by Ext.A8 and accepted by the tribunal. The tribunal has taken Rs.800/- as monthly wages. According to the appellant, he was getting Rs.2,500/- per month as he was working as a temporary coolie under M.N.Siddique, Kohinoor Textiles. His job was lost because his leg was amputated and his future prospects were also diminished. There was compound fracture of right femur with vascular injury. A below knee amputation was done at the site of injury and skin grafting was also done. Appellant was aged 21 at the time of accident. Going by second schedule, 17 can be the multiplier even though tribunal has taken 30 as the multiplier. The accident occurred in the year 1988. Considering the wages of a coolie in the State in 1988 and also the future prospects, we fix Rs.1,200/- as the monthly income. For 35% disability, compensation payable will be Rs.1,200 x 12 x $\frac{35}{100}$ x 17 = Rs.85,680/-.

The tribunal has calculated compensation for disability at Rs.67,200/-. We have calculated compensation payable for disability and earning power at Rs.85,680/-. So, additional compensation payable on account of loss of

earning capacity and disability is Rs.18,480/-. We see no ground to increase the compensation granted on other grounds. Total compensation granted was Rs.99,600/-. Adding Rs.18,480/-, the compensation payable will be Rs.1,18,080/-.

4. The Tribunal has deducted 25% on the ground that it is stated in the first information statement that the appellant was putting his leg outside the vehicle. But, in the deposition before the tribunal, it was stated by him that he has not made such a statement. His legs were inside the trekker. There was a head-on collision. After finding that the accident occurred due to the composite negligence of both the drivers, we are of the opinion that it is not proper for the tribunal to fix 25% contributory negligence. The accident occurred due to the negligence of both the drivers. As a result of the accident, his leg was fractured and finally, the leg was amputated. Therefore, finding of contributory negligence is vacated. Therefore, total compensation payable was calculated at Rs.1,18,080/-. The tribunal has already held that both drivers of bus and trekker were equally liable. But, liability of third respondent insurance company (fourth respondent herein) was only Rs.15,000/-.

Sixth respondent (first respondent herein) United India Insurance Company which insured the bus is liable to pay 50% of the above compensation, that is, Rs.59,040/-. Oriental Insurance Company Limited is liable to pay only Rs.15,000/- as there was limitation of liability. Respondents 2 and 3 herein (respondents 1 and 2 in the MV (OP)) are liable to pay the balance amount. Oriental Insurance Company has already paid the amount of Rs.15,000/-. Respondents are liable to pay the amount as directed with interest as fixed by the tribunal after deducting the amount already paid.

The appeal is allowed partly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A. NO.1378/99

JUDGMENT

Dated:24th May, 2007